



## TUCKER ELLIS & WEST LLP

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July 29, 2009

### VIA U.S. MAIL

M. Robert Blanchard, Esq.  
Levin, Papantonio, Thomas, Mitchell, Echsner  
& Proctor, P.A.  
316 South Baylen Street, Suite 600  
Pensacola, Florida 32502

Re: In Re Digitek ® Products Liability Litigation, MDL No. 1968  
U.S. District Court for the Southern District of West Virginia  
*Doris E. Freund v. Actavis Totowa, LLC, et al.* (Case No. 2:09-cv-00474)  
*Mickie Taylor v. Actavis Totowa, LLC, et al.* (Case No. 2:09-cv-00476)  
*Kendall Calhoun v. Actavis Totowa, LLC, et al.* (Case No. 2:09-cv-00473)  
*Ruth Goldstein v. Actavis Totowa, LLC, et al.* (Case No. 2:09-cv-00475)  
*Jody Martinez v. Actavis Totowa, LLC, et al.* (Case No. 2:09-cv-00762)

Dear Counsel:

My office has received the interrogatories and requests for production of documents you served on July 22. We have, so far, worked closely with your MDL leaders to resolve discovery issues. There are several problems with these requests that deserve note.

First, the court-ordered time limit for serving discovery to Defendants expired on June 1, 2009. See Pretrial Order #16, p. 13. Because these interrogatories and requests for production of documents were not served within the time frame set out in Pretrial Order #16, we are not obligated to respond to this discovery. Obviously for cases filed after June 1, 2009 PTO #16 will require some adjustment, but that is the current rule.

In addition, the interrogatories and requests for production of documents relate to issues specific to your individual plaintiffs. We are willing to work with plaintiffs in making the discovery process as smooth as possible, but because these five cases have not been nominated or selected for trial, plaintiff-specific discovery in these cases is not yet warranted. If these cases are selected for trial and assigned to a trial pool group as set out on pages 15-16 of Pretrial Order #16, plaintiff-specific discovery will proceed as set forth in that Order. Until then, we will continue with the document production and other discovery as set out in Pretrial Order #16.



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For these reasons we do not intend to answer your discovery. If you have questions, please feel free to call or contact me via e-mail.

Sincerely,

TUCKER ELLIS & WEST LLP

Rebecca A. Lefler

RAL:el

cc: Harry F. Bell, Jr. Esq.  
Fred Thompson, III, Esq.  
Carl Frankovitch, Esq.  
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